

JHARKHAND REAL ESTATE REGULATORY AUTHORITY

IN THE COURT OF CHAIRMAN, RERA

Present ----- Ranjeet Kumar Choudhary

Dated Ranchi the 02nd day of August, 2023

Complaint Case No. 25 of 2018

Shri Amar Nath Tiwary,

Shyama Apartment,

DGMS (Old),

Police Line, Dhanbad

-----Complainant

-Versus-

1. Sri Manmohan Verma,
S/o Late Goverdhan Das Verma,
4 F, Ashok Nagar,
Dhansar, Dhanbad
2. Dheeraj Kumar Singh,

S/o Sri Amrendra Narayan Singh,
Director of M/s Apcon Homes Pvt. Ltd.
Chandra Vihar Colony, Dhaiya,
P.O.- I.S.M., District- Dhanbad

--- Respondents

Complainant Represented through --- Mr. Pankaj Kumar Prasad,
Ld. Advocate

Respondent No. 1 represented through --- Self

Respondent No. 2 represented through --- Father- Amrendra
Narayan Singh

JUDGMENT

1. The instant Complaint has been brought by the Complainant Amar Nath Tiwary against the Respondents for getting possession of his flat and also for its registration in his favour.

2. According to the Complaint Petition, it is the case of the Complainant that he entered into agreement for sale in a purchaser capacity on 02.04.2011 with Respondent No. 1 Manmohan Verma for purchase of a flat in "Asta Manmohan Estate" in Block- B having super built-up area of 1300 sq. ft. approx. At that time landlord share was not allotted. The Complainant was told that some litigation has cropped up between landowner and developer as developer did some deviation in

approved plan sanctioned by MADA. Landowner filed one Complaint before MADA for taking appropriate action against the builder although landlord showed his continuous commitment to deliver possession of the flat. The consideration amount of the flat was Rs. 13,00,000/- (Thirteen lakh) only out of which Complainant paid Rs. 12,00,000/- (Twelve lakh) only and agreed to pay the remaining amount at the time of execution of sale deed. The litigation between the developer and the builder is going on and Complainant wants possession of his flat. Hence, it has been prayed that direction may be given to the Respondents to deliver possession of the flat to him and execute sale deed in his favour after receiving balance consideration amount.

3. On being noticed, both the Respondents appeared before the Authority one by one and filed their Written Statement separately. As per the Written Statement filed by the Respondent No. 1 Manmohan Verma, it is his case that he had given 22 Kathas of land to the Respondent No. 2 for construction of apartment as per development agreement dated 25.01.2010. The land is situated in Shanti Nagar, P.S.- Saraidhela and as per the development agreement share of the Respondent No. 1 is 36% and share of the developer is 64%. He had executed power of attorney dated 26.06.2010 in favour of the Respondent No. 1 but the Respondent No. 1 misused the power of attorney and it was cancelled by him on 23.09.2011. Thereafter, on

12.09.2018, a fresh power of attorney was executed on the direction of the Court. He has filed original Suit No. 57/2018 before Commercial Court, Dhanbad in which Respondent No. 2 is one of the Defendant. It is said that Respondent No. 2 has not completed the construction work and as such possession of the flat could not be given to the Complainant. It is further said that since the original Suit No. 57/2018 is pending in Civil Court, this Authority has no jurisdiction in the matter.

4. As per the Written Statement filed by the Respondent No. 2 Dheeraj Kumar Singh, it is his case that case brought by the Complainant is not maintainable. On 29.11.2010, as per development agreement 36% share of the Respondent No. 1 was allotted which finds corroboration by the Petition filed before the Hon'ble Jharkhand High Court vide A.B.A. No. 264/2012. Respondent had given one undertaking in the Court of Chief Judicial Magistrate and in Para- 3 of this undertaking, the facts regarding allotment of share is mentioned. It is surprising that without mentioning the Flat Number in the agreement for sale, Complainant paid Rs. 12,00,000/- (Twelve lakh) only to Respondent No. 1 Manmohan Verma against the anonymous flat. It is also said that there is no flat in the apartment having an area of 1300 sq. ft. as mentioned by the Complainant in the Complaint Petition. Hence, it has been prayed to dismiss the case.

5. The only point arising out of this case for determination is whether the Complainant is entitled for relief as claimed for ?

FINDINGS

6. Complainant himself argued his case. He has submitted that during hearing of this case, he has got possession of the flat but the project lacks other amenities and facilities and as such the flat is not inhabitable. Hence, it has been prayed that necessary direction may be given to the Respondent No. 2 to provide all amenities and facilities in the project in which his flat is situated.

7. Respondent No. 1 also argued his case. He has submitted that Respondent No. 2 has not completed flats of his share despite the direction of this Court and as such he may be directed to complete the remaining work of the flats belonging to him (Respondent No. 1).

8. On behalf of the Respondent No. 2, one Farid Alam was authorized to represent him before the Authority. Subsequently, his father Amrendra Narayan Singh started representing him before the Authority and he argued the case of the Respondent No. 2. He has submitted that development agreement was executed between Respondent No. 1 and Respondent No. 2 in the year 2010 and Respondent No. 1 had given Respondent No. 2 power of attorney which was cancelled on 23.09.2011. Thereafter, on the Order of the Court, a fresh power of attorney was given on 12.09.2018 and this is the reason construction of project was

delayed. On the direction of the Authority, Respondent No. 2 has completed the internal work of the flat of the Complainant and possession of this flat was delivered to Respondent No. 1 as because flat of the Complainant was of the share of landowner (Respondent No. 1). Complainant has obtained possession of this flat which is evident from possession letter dated 28.06.2020 issued by the Respondent No. 1. He has further submitted that on the direction of the Authority, flat of one Moni Sinha has also been delivered to her. It is his further argument that almost all remaining works of the project have been completed and lifts have been installed. During pendency of the present case, Respondent No. 1, who is owner of M/s Pre- Stressed Udyog (India) Pvt. Ltd., sold his firm to Mahesh Pradhan and others and this Mahesh Pradhan instituted Civil Suit against the Respondent No. 2 and his purchasers claiming the “**Aastha Manmohan Estate**”, Respondent No. 2 became helpless to sell his remaining flats and purchasers of other flat stopped making further payment to him due to litigation. Although, Respondent No. 1 has filed an application before this Authority claiming that this “**Aastha Manmohan Estate**” has not been sold to Pradhan brothers but the Civil Court where this Civil Suit is pending has not passed any Order in this regard. Due to paucity of fund, Respondent No. 2 is not in position to install generator which is the only work remained to be done. Respondent No. 2 has taken step for installation of fire safety system also

on the direction of the Authority. Hence, he has prayed to reject the Complaint filed by the Complainant before the Authority.

9. Having heard the argument of both the parties, perused the case record and the documents filed by the parties. Also perused the Order Sheet of the case record. This case has been brought by the Complainant for getting possession of the flat booked by him in the project of the Respondent No. 2 namely “**Aastha Manmohan Estate**”. Admittedly, Complainant has not done any monetary transaction with the Respondent No. 2 rather he has done so with the Respondent No. 1 as the Respondent No. 1 is the landlord upon whose land this project is being constructed by the Respondent No. 2. Respondent No. 1 came before this Court with this plea that Respondent No. 2 has not completed the project and as such he is unable to give possession of the flat to the Complainant. After intervention of the Authority, the flat of the Complainant was completed and on 28.06.2020 its possession was given by the Respondent No. 1 to the Complainant as transpires from Possession Certificate. The main grievance of the Complainant was addressed after getting Possession Certificate. But, since other amenities and facilities of the project were not complete, the present case continued to proceed. I find that several works were done by the Respondent No. 2 in the project. Lifts have been installed in both building of the project. Respondent No. 2 has taken step for providing fire safety system in the project. Only generator set has not

been provided by the Respondent No. 2 in the project. His father, who is pursuing this case on his behalf, contended before the Court that as soon as he will have money, the Respondent No. 2 will provide generator set also. Perusal of case records shows that the development agreement was executed on 26.06.2010 and at that time power of attorney was also executed by the Respondent No. 1 in favour of the Respondent No. 2 but it was cancelled on 23.09.2011. It was restored on 12.09.2018 on the direction of the Court. I further find that several litigations have been contested between both the Respondents which affected the progress of the project. Respondent No. 1 is Director of M/s Pre-Stressed Udyog (India) Private Limited and he transferred this firm to Mahesh Pradhan and others and Mahesh Pradhan has instituted original Suit No. 97/2020 against the Respondent No. 2 and 16 flat owners, who have purchased flats in the project from him (Respondent No. 2). Perusal of sale deed executed by the Respondent No. 2 indicates that some of the sale deeds are scheduled sale deed as part payment from the purchasers is pending. Respondent No. 1 has taken this plea that lands involved in the project have not been transferred by him to Mahesh Pradhan and others, rather other properties of M/s Pre-Stressed Udyog (India) Private Limited have been sold to Mahesh Pradhan on getting some of Rs. 17.45 crore. I feel that due to the filing of Civil Suit, the Respondent No. 2 is not in a position to sale other flats to other purchasers and certainly litigation with respect to project property must have created doubts in the mind of

purchaser of the flat. I feel that due to these reasons, Respondent No. 2 is presently not in a position to install the generator set in the project. However, it is the duty of the builder to provide a generator set in the project and as such Respondent No. 2 is directed to provide generator set in the building as early as possible preferably within six months from the date of this Order. Respondent No. 1 is expected to help Respondent No. 2 in this matter by obtaining any positive order from the Court in the case which has been instituted by Mahesh Pradhan against him, Respondent No. 2 and sixteen purchasers of flat from Respondent No. 2. He is further directed to take necessary step for installation of fire safety system within three months from the date of this Order.

10. With these observations, the instant Complaint brought by the Complainant is disposed of. The grievance raised by him in the Complaint Petition has already been addressed way back in the year 2020.

